

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
BATESVILLE DIVISION**

LISA MURPHY  
ADC #760343

PLAINTIFF

V.

1:14CV00125 BSM/HDY

KRAMER JONES *et al.*

DEFENDANTS

**PROPOSED FINDINGS AND RECOMMENDATIONS**

**INSTRUCTIONS**

The following recommended disposition has been sent to Chief United States District Judge Brian S. Miller. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the

hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court  
Eastern District of Arkansas  
600 West Capitol Avenue, Suite A149  
Little Rock, AR 72201-3325

### **DISPOSITION**

Plaintiff Lisa Murphy filed a *pro se* complaint on October 9, 2014. Plaintiff has now moved to voluntarily dismiss her complaint (docket entry #18). Defendants have filed a response in opposition (docket entry #19), in which they seek a ruling on their pending motion to dismiss. Plaintiff’s motion to dismiss was filed the day after Defendants filed their motion. Thus, Plaintiff likely was unaware of Defendants’ motion when she drafted hers. Defendants will not be prejudiced if Plaintiff’s motion is granted, and it therefore should be. FED.R.CIV.P. 41(a)(2). However, if this case is reopened, Plaintiff should be required to respond to Defendants’ motion to dismiss before any further action is taken on the case.

#### **IT IS THEREFORE RECOMMENDED THAT:**

1. Plaintiff’s motion to voluntarily dismiss her complaint (docket entry #18) be GRANTED, and Plaintiff’s complaint be DISMISSED WITHOUT PREJUDICE.
2. If this case is reopened, Plaintiff be required to respond to Defendants’ motion to dismiss before any further action is taken on the case.

3. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 18 day of November, 2014.



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UNITED STATES MAGISTRATE JUDGE